Supreme Court, U.S.
FILED

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No. 02134 5 MAR 11 2003

In The

Supreme Court of the United States

EDWIN B. EDWARDS, III,

Petitioner,

vs.

STATE OF RHODE ISLAND,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Rhode Island

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Petitioner was deprived of due process of law when the Rhode Island Supreme Court affirmed the petitioner's sentence to life imprisonment without the possibility of parole where the indictment against him did not accuse him of an offense for which that sentence was available?

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RULE

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DECISION BELOW

The opinion of the Rhode Island Supreme Court is set forth beginning at App. 1, and is reported at *State v. Edwards*, 810 A.2d 226 (R.I. 2002). The order denying the petition for rehearing is not reported, but is reproduced at App. 33.

STATEMENT OF JURISDICTION OF THIS COURT

Judgment entered in the Rhode Island Supreme Court on November 25, 2002. A timely petition for rehearing was denied on December 12, 2002. Jurisdiction of this Court to review this matter on certiorari is conferred by 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional and statutory provisions involved in this case are U.S. Const. Amend 5, U.S. Const. Amend. 6, U.S. Const. Amend. 14, R.I. Gen. L. § 11-23-1, and R.I. Pub. L. 1996, ch. 152, sec. 1, codified at R.I. Gen. L. sec. 11-23-2 (current version appearing at sec. 11-23-2 (2000 Reenactment)), all of which appear at App. 34-38.

STATEMENT OF THE CASE

Edwin B. Edwards, III [hereinafter referred to as "Mr. Edwards," or "the Petitioner"] was indicted on December 13, 1999 by the Providence County Grand Jury on one count of domestic murder of Jeanne Robinson in violation

of R.I. Gen. L. § 11-23-1, § 12-29-2, and § 12-29-5. App. 39. On January 7, 2000, the Attorney General filed a notice, pursuant to R.I. Gen. L. § 12-19.2-1, of the State's intention to seek a sentence of life without parole pursuant to § 11-23-2(4). The case was reached for trial in superior court on January 8, 2001 at which point Mr. Edwards waived his right to trial by jury. The trial proceeded and concluded on January 23, 2001, and on February 5, 2001, Justice Savage found Mr. Edwards guilty of first degree murder. The trial court also found that the State had proved, beyond a reasonable doubt, allegations required to subject Mr. Edwards to a sentence of life without parole pursuant to § 11-23-2(4).

On April 2, 2001 Mr. Edwards filed a sentencing memorandum, App. 40, pointing out that he had not been charged pursuant to § 11-23-2 and that imposing a sentence of life without parole pursuant to that statute would violate his rights as guaranteed pursuant to the United States Constitution, Amend. 5, Amend. 6, and Amend. 14. App. 44. The trial court rejected that claim and imposed the sentence of life imprisonment without the possibility of parole. Mr. Edwards appealed his conviction to the Rhode Island Supreme Court, arguing, *inter alia*, that his sentence violated due process because he had not properly been charged with an offense that carried the penalty of life without the possibility of parole.[1] On November 25,

[1] Mr. Edwards in his brief to the Rhode Island Supreme Court asserted that his sentence violated both the Rhode Island Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

Whether the source for these principles is the Fourteenth Amendment's requirement that states afford Due

(Continued on following page)

2002 the Rhode Island Supreme Court issued an opinion rejecting Mr. Edwards' due process claim and affirmed both the underlying conviction and the sentence of life without parole. *State v. Edwards,* 810 A.2d 226 (R.I. 2002), App. 1. On December 12, 2002 the Rhode Island Supreme Court denied Mr. Edwards' timely petition for rehearing. App. 33.

This case arises out of the death of Jeanne Robinson, Mr. Edwards' fiancée in Cranston, Rhode Island during the late evening of September 18, 1999. Mr. Edwards at his non-jury trial admitted to having caused Jeanne's death, claiming that his capacity to form the intent to kill had been impeded by the ingestion of a combination of prescribed medications. On September 18, 1999 Mr. Edwards, and Jeanne had attended the wedding of Jeanne's adult daughter in Bristol, Rhode Island. After the wedding, Mr. Edwards drove Jeanne back to her home in Cranston,

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> Process Clause, the Fifth Amendment's grand jury guarantee for federal prosecutions, or the due process or grand jury clauses of the Rhode Island Constitution, it is clear that on the facts of this case, the grand jury that indicted the Defendant never alleged any of the elements set forth in § 11-23-2. The indictment may have been adequate to subject the Defendant to life imprisonment, the maximum penalty for first degree as defined in § 11-23-1, as well as the enhancement provided for in 12-29-2 and 12-19-5 (domestic), because both of these statutes were identified by the grand jury in the indictment. Defendant cannot, however, be subjected to the enhanced penalty of life without parole without those elements having first been indicted by a properly constituted grand jury.

State v. Edwards, Brief of Defendant-Appellant at 15. His brief also contained numerous references to this Court's opinions in *Jones*, *Apprendi*, and *Castillo*.

Rhode Island. For weeks Mr. Edwards and Jeanne had quarreled because of Mr. Edwards' lack of enthusiasm for interaction with Jeanne's former husband and former in-laws. During the summer of 1999, at Jeanne's recommendation, Mr. Edwards had consulted a psychiatrist and had received prescriptions for Klonopin and Buspar. Mr. Edwards testified that he took large quantities of these medications over the course of the day on September 18, 1999. In any event, when they arrived at Jeanne's home and while Mr. Edwards was still seated in his car, Jeanne was so upset with Mr. Edwards that she threw her engagement ring at him, asked him to leave, and went inside her house.

Mr. Edwards, after retrieving the ring, headed toward Jeanne's house. The outside door was unlocked, but when he got to Jeanne's bedroom upstairs he found that door locked. He began pleading with Jeanne, but she would not let him in. Finally, while seated at the top of the stairs he kicked at the door, breaking the lock. According to Mr. Edwards he then was on top of Jeanne in her bed, choking her, although he had not been planning to do that when he kicked in the door. She then got up, crying and asking him why he had done it. Mr. Edwards followed Jeanne downstairs to the kitchen. Noticing a flashlight on the kitchen table, Mr. Edwards picked up the flashlight and began to hit Jeanne with it; then both of them fell down on the floor. Jeanne then stood up and went outside with Mr. Edwards following. Jeanne was saying in a soft voice, "help me, help me." Mr. Edwards picked Jeanne up, intending to bring her into the house. His next memory

was of backing out of the driveway, feeling a bump as if he had hit a mud flap.[2] After driving for a short time, Mr. Edwards noticed that he had blood on his shirt. He stopped the car, ripped off the shirt and threw it out of the car, and put on a sweat shirt that he had in his car.

After leaving Jeanne's neighborhood, Mr. Edwards' next memory is of passing through the tollgate at the Newport Bridge. During the drive he made several cell phone calls to his sisters Cindy and Debbie, advising them that he was planning to end his life. Mr. Edward remembered approaching the tollbooth; somehow he reached the top of the Newport Bridge, parked the car, and climbed out on one of the beams off the side of the bridge. Newport Police Officer Frank Rosa, who was known to Mr. Edwards, arrived at the bridge and, aided by the Rhode Island State Police, assisted Mr. Edwards in climbing off of the bridge beam and, ultimately, into custody.

Mr. Edwards had stated that he had taken a number of Klonopin tablets during the course of the day. In addition, while driving to the Newport Bridge, Mr. Edwards had advised his sister that he was finishing a bottle of pills. Mr. Edwards was transported to Newport Hospital, where attending Nurse Catherine Aubin observed that he had thick speech and the gait of an intoxicated person, although she did not smell the odor of alcohol. Owing to his statement regarding the Klonopin, Mr. Edwards was observed for several hours and given a charcoal drink for

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[2] The State introduced evidence to the effect that Mr. Edwards' vehicle had run over Jeanne one or more times in the driveway and dragged her body a distance into the street, where she was found later by Cranston Police.

the purposes of absorbing any Klonopin that was in his stomach and preventing it from reaching his bloodstream. After several hours at the hospital, Mr. Edwards was transported to the Newport and, ultimately, Cranston Police Stations. At both locations Mr. Edwards exhibited intoxication, including his speech patterns and his inability to maintain balance. The trial justice found that, at least by the time he was questioned by Cranston Detective Falcone, Mr. Edwards was intoxicated to a degree that he could not competently waive his *Miranda* rights. The trial justice therefore suppressed Mr. Edwards' statements to Det. Falcone. Although acknowledging that Mr. Edwards had been so intoxicated that he could not competently waive his rights, the trial justice nevertheless placed heavy reliance on statements that Mr. Edwards had made regarding the incident and his ingestion of Klonopin. Moreover, the trial justice rejected Mr. Edwards' defense of diminished capacity by intoxication.[3]

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[3] Although the trial court rejected Mr. Edwards' claim of intoxication, there was ample evidence introduced in his defense to support the claim. For example, a friend of Jeanne's who rode with the couple to the wedding recalled that Mr. Edwards had consumed some medication while driving and that Jeanne had cautioned that he was taking too much and that it would "knock him down." Mr. Edwards testified that he had consumed many doses of Klonopin during the day because of the anxiety he experienced in attending the wedding. Later, as Mr. Edwards was preparing to drive Jeanne home, Jeanne's brother observed Mr. Edwards, confronted him and asked if he was capable of driving. Mr. Edwards responded that he was "looped out" on soda and tranquilizers. Laboratory tests taken after Mr. Edwards was in custody supported his claim of Klonopin ingestion, and expert testimony offered by the defense indicated that Mr. Edwards' level demonstrated that he had consumed twenty-five or more Klonopin pills and that he was in the range of therapeutic intoxication, making him unable to form the specific intent necessary for first degree murder.

The trial justice found Mr. Edwards guilty of first degree murder pursuant to R.I. Gen. L. § 11-23-1. Despite the fact that the grand jury had not indicted Mr. Edwards pursuant to R.I. Gen. L. § 11-23-2,[4] the trial court found the additional elements of torture or aggravated battery as required for conviction pursuant to that statute. The trial justice accordingly imposed a sentence of life without the possibility of parole.

ARGUMENT

The Petitioner was deprived of due process of law when the Rhode Island Supreme Court affirmed the petitioner's sentence to life imprisonment without the possibility of parole where the indictment against him did not accuse him of an offense for which that sentence was available.

> At stake in this case are constitutional protections of surpassing importance: the proscription of any deprivation of liberty without "due process of law," Amdt. 14, and the guarantee that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury," Amdt. 6. Together, these rights indisputably entitle a criminal defendant to "a jury determination that [he] is guilty of every element

[4] Mr. Edwards argued before the trial justice and on appeal that because the grand jury did not charge him with a violation of R.I. Gen. L. § 11-23-2, the trial justice did not have the authority to find him guilty on that offense, nor could the court impose the life without parole sentence contemplated by that offense.

> of the crime with which he is charged, beyond a reasonable doubt."

Apprendi v. New Jersey, 530 U.S. 466, 476-77 (2000) (quoting *United States v. Gaudin*, 515 U.S. 506, 510 (1995)).

Mr. Edwards asserts that his due process rights have been violated by the imposition of a sentence for an offense that was not set forth in the indictment against him. As noted *supra*, the grand jury that indicted Mr. Edwards returned a true bill, App. 39, charging him with first degree murder, R.I. Gen. L. § 11-23-1, App. 36, under domestic circumstances,[5] an offense that carries the mandatory penalty of life imprisonment under Rhode Island law. In this case, however, the State sought to enhance that penalty by seeking to prove that Mr. Edwards committed "life without parole/murder" in violation of R.I. Gen. L. § 11-23-2(4), App. 37, in that the homicide was "committed in a manner involving torture or an aggravated battery to the victim. . . . " *Id.*, App. 37. Mr. Edwards protested that he had not been indicted for that offense and that he could not, therefore, be sentenced pursuant to § 11-23-2. Both the trial court and the Rhode Island Supreme Court rejected Mr. Edwards' argument. Based on these decisions, Mr. Edwards has been deprived

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[5] The "domestic circumstances" are encompassed in the indictment's reference to R.I. Gen. L. § 12-29-2 and § 12-29-5, which add nothing of substance to Mr. Edwards' punishment; these statutes require the person convicted to participate in a "batterers' intervention" counseling program and to pay a special twenty-five dollar assessment in addition to other court costs. R.I. Gen. L. § 12-29-5.

of the opportunity to apply for parole;[6] if the Rhode Island Supreme Court's decision stands, Mr. Edwards will remain imprisoned for the rest of his life.

This Court, in a series of cases decided over the last few Terms, has treated "sentencing enhancement" factors as creating separate offenses that must be charged and proved as such. In *Jones v. United States*, 526 U.S. 227 (1999), the defendants were charged with the use of a firearm while carjacking in violation of 18 U.S.C. § 2119. The statute as it read at the time of the offense set out the elements and then provided for punishment of imprisonment of up to fifteen years. *Id.* § 2119(1). An additional subsection provided for up to twenty-five years if serious bodily injury resulted. *Id.* § 2119(2). Yet another subsection provided for a sentence of up to life if death resulted from the carjacking. *Id.* § 2119(3).

The indictment in *Jones* did not refer to the subsections of the statute, nor did it contain allegations of any of the factors set out in subsections (2) and (3). Defendants were convicted at trial, and at the time of sentencing the court found serious bodily injury to the victims and imposes

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[6] Rhode Island permits a person convicted of first degree murder pursuant to § 11-23-1 to apply for parole after twenty years. R.I. Gen. L. § 13-8-13(a)(3). Persons convicted pursuant to § 11-23-2 and sentenced thereunder are not eligible for parole. In addition, Mr. Edwards is precluded from applying for "medical parole", a program that permits the release of terminal or severely disabled inmates prior to their eligibility dates under certain circumstances. R.I. Gen. L. § 13-8.1-1 *et. seq.* That program is unavailable to inmates convicted and sentenced pursuant to § 11-23-2. *See* R.I. Gen. L. § 13-8.1-4(a) (parole board may not grant medical parole to inmate under sentence of "life without parole.").

a sentence of twenty-five years. The Ninth Circuit affirmed, but this Court, on certiorari, reversed. The Court reasoned that each of the separate subsections of the statute involved facts that had the potential to significantly increase the defendants' sentences. The government simply characterized these as "sentencing factors" that a judge was free to consider at the time of sentencing. Given the significance of these factors on the potential sentence, however, the *Jones* Court reasoned that these additional factors gave rise to separate offenses that had to be *charged* and proved in order to impose the lengthier prison terms set forth. Although the structure of the statute was susceptible of multiple interpretations, the Court found that the statute would be unconstitutional if the government were relieved of the need to present the enhancing facts to a grand jury, obtain an indictment setting forth the "enhanced" charge, and prove them at trial:

> In sum, the Government's view would raise serious constitutional questions on which precedent is not dispositive. Any doubt on the issue of statutory construction is hence to be resolved in favor of avoiding those questions. This is done by construing § 2119 as establishing three separate offenses by the specification of distinct elements, each of which must be *charged by indictment*, proven beyond a reasonable doubt, and submitted to a jury for its verdict.

Jones, 526 U.S. at 251 (emphasis added).

The next term, this Court revisited this issue in *Castillo v. United States*, 530 U.S. 120 (2000), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Castillo* was a firearms case involving several members of the so-called Branch-Davidian religious sect. The defendants were

indicted for using a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c). That statute provided a general penalty of five years, with a mandatory thirty years if the weapon used was a machinegun. The defendants were tried, convicted, and sentenced to a term of thirty years. Consistent with *Jones*, the Court held that the machine gun "enhancement" was not merely a sentencing factor but a separate offense that had to be *charged* and proved in order to invoke the thirty-year mandatory provision. The very severity of the additional sentence, the Court reasoned, made it clear that that factor created a "separate crime" from the generic "use of a firearm" offense.

Barely two weeks after deciding *Castillo*, this Court applied these principles to a state court case in *Apprendi v. New Jersey*, *supra*. This case involved an incident where the defendant had fired several shots into the dwelling of an African-American family. The prosecution charged him with unlawful possession of a firearm, an offense carrying a term of five to ten years. The defendant pled guilty to the charge, whereupon the prosecutor successfully invoked the New Jersey hate crimes statute. At a sentencing hearing, the prosecutor established to the judge's satisfaction that the defendant had been "motivated by racial bias." Pursuant to the applicable hate crimes law, the court accordingly imposed a sentence of twelve years. Defendant's efforts to overturn this sentence were unsuccessful in the courts of New Jersey. On certiorari, this Court reversed, referring to its holding in *Jones*:

> We there noted that "under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that

> increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury and proven beyond a reasonable doubt. . . . " The Fourteenth Amendment commands the same answer in this case involving a state statute.

530 U.S. at 476 (citation omitted).[7] The *Apprendi* Court reiterated the view that so-called "enhancement" statutes actually create separate offenses and that all of the procedural protections attendant to those offenses must be observed.[8] The Court noted that this is not a novel concept and could, in fact, be traced to the traditions of the common law:

> "Where a statute annexes a higher degree of punishment to a common-law felony, if committed under particular circumstances, an indictment for the offence, in order to bring the defendant within that higher degree of punishment, must expressly charge it to have been committed under those circumstances, and must state the circumstances with certainty and precision."

530 U.S. at 480 (quoting 2 M. Hale, Pleas of the Crown 170).

This Court applied similar reasoning last term in *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428 (2002). In

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[7] Because the Fifth Amendment right to presentment has never been incorporated into the Fourteenth, the *Apprendi* Court did not address whether the United States Constitution requires inclusion of the "separate" offense in an indictment returned by a grand jury. 530 U.S. at 477 n.3.

[8] This Court in *Apprendi* specifically declined to address the question whether there was any constitutional flaw in the omission of the aggravating elements in that case from the indictment. *Apprendi*, 530 U.S. at 477 n.3.

Ring, this Court analyzed Arizona's capital sentencing statutes. The defendant in *Ring* had been convicted of capital murder, but pursuant to Arizona's sentencing procedures, the aggravating circumstances necessary to impose the death penalty were determined by the sentencing judge rather than the jury. This Court held that procedure violative of the Sixth Amendment right to trial by jury as described in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). In *Ring*, this Court concluded that "aggravating factors" set forth in the Arizona statutory scheme in effect created a separate offense and that the defendant had a constitutional right to a jury determination as to all elements of the enhanced offense:

> Because Arizona's enumerated aggravating factors operate as "the functional equivalent of an element of a greater offense," *Apprendi*, 530 U.S. at 494, n.19, the Sixth Amendment requires that they be found by a jury.

Ring, 122 S. Ct. at 2443.

At least one state court has recognized that this Court's *Apprendi* line of cases relates directly to the manner in which offenses are charged. The court in *People v. Kaczmarek*, 741 N.E.2d 1131, 251 Ill. Dec. 953 (Ill. App. 2000), *petition for leave to appeal granted*, 199 Ill. 2d 569, 775 N.E.2d 6 (2002), vacated a murder sentence and remanded for resentencing in light of an *Apprendi* problem. The court noted that the factors used to enhance the defendant's sentence had not been charged and the court opined that such circumstance was contrary to the *Jones-Castillo-Apprendi* line of cases:

> It must be noted that the rule announced by *Apprendi* makes no mention of any obligation on

> the part of the prosecution to allege the enhancing factor in the indictment. The Court's holding only provides that any fact other than a prior conviction that increases the punishment for the crime beyond the statutory maximum must be presented to the jury and proved beyond a reasonable doubt. The Court never expressly indicated that such a fact need also be alleged in the indictment. Nonetheless, when the Court's ruling is viewed as a whole, and when it is specifically considered together with the Court's statement in *Jones*, it becomes clear that facts that expose a defendant to a penalty beyond the maximum must also be pled in the indictment. Indeed, several federal courts have read *Apprendi* this way.

Id. at n.7.

The foregoing cases make it clear that the central question in Mr. Edwards' case is whether "life without parole" murder pursuant to § 11-23-2, App. 37, is a separate offense from first degree murder pursuant to § 11-23-1, App. 36. Prior to the decision of the Rhode Island Supreme Court in this case, that question had already been answered in *State v. Cline*, 122 R.I. 297, 405 A.2d 192 (1979). Cline had been charged with committing a murder while in confinement at the Adult Correctional Institutions. The indictment read in pertinent part as follows:

> "That Robert Cline . . . did murder one Frank A. Pirri while committed to confinement to the Adult Correctional Institutions in violation of s. 11-23-1 and 11-23-2, Reenactment of 1969, as amended."

122 R.I. at 328, 405 A.2d at 1209. At the time Cline was charged, murder pursuant to § 11-23-1 provided for a sentence of life imprisonment, while the version of § 11-23-2

then in effect provided for the death penalty for any murder committed while in confinement. Cline was convicted and sentenced to death; the Rhode Island Supreme Court vacated that sentence after holding the death penalty provision of the statute unconstitutional. *See State v. Cline*, 397 A.2d 1309 (1979). After Cline was resentenced, the court entertained an appeal dealing with the underlying conviction for murder.

In his second appeal, Cline pressed an argument that he had presented below regarding reference in the indictment to the allegation that the murder had occurred "while committed to the Adult Correctional Institutions." Cline contended that this language was prejudicial and should have been stricken from the indictment. The trial justice rejected Cline's argument, and the Rhode Island Supreme Court on appeal agreed. The Rhode Island Supreme Court held that the allegation that the crime had been committed during confinement was an element necessary to prove the offense. Moreover, examining both §§ 11-23-1 and 11-23-2, the court reasoned that it was essential for the "while committed" language to appear in the indictment because the addition of that element in § 11-23-2 set forth a *different crime* from murder pursuant to § 11-23-1:

> In adding the element "while committed to confinement" to the crime of murder, the Legislature has created a *separate and distinct crime* for which it provided a special and mandatory penalty. Even though the penalty of execution has been determined to be constitutionally impermissible, the intention of the Legislature to create a specific and separate category of crime is clear.

State v. Cline, 122 R.I. at 333, 405 A.2d at 1211 (emphasis added). Because the court in *Cline* found that the additional facts created a separate offense, the court concluded that inclusion of these facts in the indictment was essential.

In this case the Rhode Island Supreme Court overlooked its own prior holding in *Cline* and failed properly to apply the reasoning in this Court's decisions in *Jones*, *Castillo*, *Apprendi*, and *Ring*. Mr. Edwards was sentenced for an offense for which he had never been indicted. To convict or sentence him on this separate offense deprived him of due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

The Rhode Island Supreme Court's decision in this case conflicts with the Illinois decision in *Kaczmarek*, U.S. S. Ct. R. 10(b) and also conflicts with the reasoning of this Court in *Jones*, *Apprendi*, *Castillo*, and *Ring*. U.S. S. Ct. R. 10(c).

To the extent that this Court has never explicitly addressed the question whether the Due Process clause prohibits a state from imposing sentence for an offense that is different from the one with which a defendant has been charged,[9] this issue is "an important question of federal law that has not been, but should be, settled by this Court. . . . " U.S. S. Ct. R. 10(c). This Court's analysis in *Apprendi* and *Ring* makes it clear that states are not free to impose penalties upon convicted persons for offenses with

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[9] See n.7 *supra*.

which they were not charged and for which they were not tried. As this Court noted in *Apprendi:*

> "Where a statute annexes a higher degree of punishment to a common-law felony, if committed under particular circumstances, an indictment for the offence, in order to bring the defendant within that higher degree of punishment, must expressly charge it to have been committed under those circumstances, and must state the circumstances with certainty and precision."

Apprendi, 530 U.S. at 480 (quoting 2 M. Hale, Pleas of the Crown 170). This Court's decision in *Ring* makes clear that the addition of "enhancing facts" to the underlying offense produces a separate and greater offense that is not encompassed within the original offense charged. Thus, the original charging instrument – having charged only the lesser offense – cannot afford the defendant the type of "certainty and precision" that is required to satisfy the requirements of due process.

To hold otherwise would be to confer upon the prosecution an unbridled authority to raise the level of the stakes on a defendant by introducing evidence of the enhanced charge and simply requesting an instruction on the newly added elements. The grave consequences that can follow from such process can be seen in cases such *Jones*, *Apprendi*, *Ring*, and this case, where years can be added to a defendant's sentence, the sentence of death might be imposed, or important opportunities for future release can be withdrawn without first complying with the formalities of proper charging.

This Court must act to remove any doubt regarding the propriety of that practice, and Mr. Edwards accordingly

prays that his petition for certiorari be granted to resolve this important issue.

The petition for certiorari ought therefore to be granted.

Respectfully submitted,

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Supreme Court

No. 2001-398-C.A.
(P1/99-4284A)

State :
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v. :
:
Edwin B. Edwards III :

Present: Williams, C.J., Lederberg, Flanders, and Goldberg, JJ. and Weisberger, C.J.-(Ret.)

OPINION

WEISBERGER, Chief Justice (Ret.) This case comes before us on the appeal of Edwin B. Edwards III (Edwards or defendant) from a judgment of conviction entered in the Superior Court of the crime of domestic murder in the first degree, following a jury-waived trial that began on January 8, 2001, and concluded on January 23, 2001. The trial justice found the defendant to be guilty of domestic murder in the first degree and further found beyond a reasonable doubt in accordance with G.L.1956 § 11-23-2(b)(4) that the defendant had committed this murder in a manner involving torture and aggravated battery to the victim. The trial justice proceeded to hold a sentencing hearing during which she took into account this aggravating factor and such mitigating factors as the defendant chose to present. She determined that the aggravating factor outweighed any mitigating factors, and sentenced the defendant to life imprisonment without parole. We affirm the conviction and also the sentence. The facts and procedural history of this case insofar as pertinent to this appeal are as follows.

This is a saga of a tragic quarrel between two people who had participated in a romantic relationship for approximately three years, according to the findings of the trial justice set forth in a carefully crafted and lengthy decision. The couple met in October 1996 at Rhodes on the Pawtuxet and began a substantive dating relationship. They were both in their late forties. Jeanne Robinson (Jeanne), the victim, had been married once before, to Wayne Robinson, and had two adult children from that marriage. She maintained a close relationship with her family. The defendant had been married twice before, first to Susanne Murray and then to Cynthia Edwards, but had no children. Jeanne worked as a charge nurse, and Edwards worked as a truck salesman for Colony Ford. Jeanne resided at 167 Fiat Avenue in Cranston, Rhode Island. Edwards maintained a nearby apartment in Cranston, where he lived by himself when he was not cohabitating with Jeanne at her house. The couple had had a rather turbulent relationship during the course of their dating and romantic involvement. There were quarrels that almost ended the relationship in 1997. However, by the end of 1998 Jeanne and Edwards became engaged. He gave her an expensive diamond ring (which he said cost $9,000). No date was set for a wedding.

The couple decided to postpone a wedding date until after the wedding of Jeanne's daughter, Jendra (which was scheduled to take place on September 18, 1999). The relationship between Jeanne and Edwards almost ended a month or so before the wedding. Jeanne discovered for the first time that Edwards had been married twice before. Until that time she had not known about his first wife. Jeanne told Edwards that she did not wish to see him anymore. His reaction made Jeanne fear for her life.

However, the quarrel was resolved with the help of Jeanne's father (Albert Girard, Sr.), and Jeanne invited Edwards to attend her daughter's wedding.

The prospect of attending this wedding was emotionally difficult and challenging for Edwards. He did not wish to interact with or be in the company of Jeanne's former husband and his family. Edwards was also jealous of the close relationship that Jeanne maintained with her family.

During the course of the relationship, Jeanne had recommended to Edwards that he should have medical assistance in order to manage his tendency towards anger. He consulted with physicians, including a psychiatrist, Dr. Susan DiMase, who recommended medications. His primary physician was a Dr. Savoretti who prescribed, among other medications, Klonopin. Edwards filled this prescription twice according to the findings of the trial justice. The recommended dosage was one to two tablets, twice a day as needed for anxiety. Although other medications were recommended by various physicians, as well as by Dr. Savoretti, the Klonopin became of paramount significance in the course of this trial.

On September 18, 1999, the day of Jendra's wedding, Jeanne was an excited mother of the bride, exhilarated by the prospect of the marriage. Edwards, on the other hand, did not really want to go to the wedding. He did not want to meet the family of Wayne Robinson or interact with Jeanne's family. Nevertheless, Edwards dressed in a tuxedo and assisted with the arrangements for a party that Jeanne was expecting to host at her house after the wedding. He carried beer and ice into the backyard and set up tables. Edwards had one beer but gave no signs of intoxication. He drove Jeanne and her friend, Josee Davis

(Josee), to the wedding. During the ride, Edwards and Jeanne had an argument about medication. He took a pill from a vial over Jeanne's objection. At no time during the drive or at any time earlier in the day did Edwards show any outward signs of intoxication.

Edwards did not enjoy the interaction with Jeanne's family and that of her ex-husband during the course of the wedding and the reception in Bristol. Ultimately, Edwards, Jeanne, and Josee left the wedding reception at about 10:30 p.m. There was no plan for the guests to return to Jeanne's house for further celebration. Edwards drove, Jeanne sat in the passenger seat, and Josee sat in the back seat. The drive from the reception in Bristol to Jeanne's house in Cranston required about thirty minutes of travel. The trial justice found that defendant had no difficulty driving home. His speech was fine. He did not appear to take any pills or have any conversation about medication on the way home. Edwards did state in the course of talking about the wedding that he did not want anything to do with the family of Jeanne's former husband. As they neared Jeanne's house, she told Edwards that she would like to go to bed and that she would like him to leave. She said that she wasn't feeling well.

Edwards drove into the driveway of Jeanne's house. All three left the car, Josee went into Jeanne's house to obtain her automobile keys so she could drive home. Jeanne and Josee spoke for a few minutes before Josee left. Josee departed for her home in Warwick sometime after 11 p.m. on September 18.

After Josee's departure, Jeanne again told Edwards to leave. They exchanged some harsh words, which resulted in Jeanne's removing her engagement ring and throwing it

at Edwards. He attempted to find the ring, and eventually found it with the assistance of a flashlight that Jeanne provided to him. He put the ring back in its box and placed the box in his automobile. He then reentered the house through the outside door which was unlocked.

When he arrived at Jeanne's bedroom, he found that the door was locked. He asked Jeanne to let him in, and when she refused, he kicked the door and broke its lock. By his own admission, he then choked Jeanne while she was in her bed. He released her and she arose from the bed crying for help, asking him why he had done it. She went downstairs to the kitchen and drank some water to catch her breath. Edwards seized a large flashlight, which was on the table, and struck her with it repeatedly. Both Edwards and Jeanne fell to the floor. Jeanne then stood up and went outside, with Edwards following. Jeanne was saying in a soft voice, "Help me, Help me." At this point, Edwards got into his automobile and ran over Jeanne twice, crushing her with the weight of the car.

A neighbor, Alma Miller, who had been a friend of Jeanne for more than twenty years, heard the call for help from outside. She opened the door and turned on the lights. She saw Edwards drive the car backward and forward and then leave the driveway. She saw the body. She took her cell phone and a flashlight and ran out to the street where the body lay. The body was lying in the roadway with injuries so severe that it was unrecognizable to Alma Miller. To Alma, Jeanne looked like "a rag doll." At this point she called 911 and summoned the police. A Sergeant Russell Henry of the Cranston Police Department arrived and saw the body of the victim, who was covered with "road rash," a combination of dirt and lacerations from her body's hitting the pavement. Although he

found pictures of Jeanne in the house, he could not make a positive identification. He noticed blood in the street and in the driveway. Inside the house he noted large puddles of blood in the kitchen, blood smears on the kitchen floor, and a large black flashlight covered with blood on the kitchen floor.

Meanwhile, Edwards, at about 12:04 a.m. on September 19, used his cell phone to call his sister, Debbi Pappas, who was the chief secretary and records clerk for the Portsmouth Police Department. He told her "I think I am in trouble. I killed Jeanne." He further told his sister that he was driving to the Newport bridge to jump into the water because he did not want to go to the Adult Correctional Institutions (ACI). He said, "I am wearing a tuxedo and its covered in blood." He further said, "I hit her with a flashlight and ran her head over twice." To his sister he sounded intoxicated, or at least she knew that something was wrong with him. At 12:17 a.m., Edwards called his sister, Cindy, and told her that he was heading to the bridge to jump. At about this point, he arrived at the Newport Bridge and drove to the center span. His presence was noted by Stephen Clarke (Clarke), the supervisor who was working at the entrance of the Newport Bridge in Jamestown. Clarke notified the State Police and the Newport Police and then drove to the top of the bridge in his own emergency vehicle. Neither Clarke nor James Romano, the toll collector, noticed that anyone came through the toll booth without paying. Romano noticed no erratic driving by anyone at the top of the bridge. Two Newport patrol cars arrived and a Jamestown patrol car happened to be on the bridge, as well.

The defendant's car was found parked directly against the curb rail at the top of the bridge. The motor was

turned off and the emergency flashers were on. Officer Silvia, of the Newport Police, discovered Edwards, who had crawled over the side of the bridge onto a platform and thence to an I-beam situated between six and eight feet from and parallel to the side of the bridge. This I-beam normally would be used by people repairing the bridge. The defendant was seated, straddling the I-beam, facing Newport, more than 200 feet above the water.

Detective Frank Rosa (Det. Rosa) was an old family friend of Edwards and had attended Edwards' wedding to his second wife. After some preliminary conversation, during which Det. Rosa attempted to persuade Edwards to return to the safe portion of the bridge, Edwards told Det. Rosa that he had done something that he could not deal with. He held up his hands and said, "I killed her, I killed her." He asked Det. Rosa to notify the Cranston Police to go to 167 Fiat Avenue (Jeanne's address). He said to Det. Rosa, "You just don't understand, I can't go to the A.C.I. or the loony house. This is her blood on my hands * * * ." "I killed her tonight. I beat her with a flashlight. I ran her over with my car twice." Ultimately, after a great deal of conversation in which Edwards again said that he kicked in Jeanne's bedroom door, beat her, dragged her outside, slammed her head into the driveway and ran over her to kill her, the officers, including a state trooper, persuaded Edwards to come to the railing, whereupon they seized him and pulled him back on the bridge. They then placed him in handcuffs and took him to the emergency room at the Newport Hospital for evaluation. They left the bridge at 1:51 a.m. From their conversation, the officers believed that Edwards had taken a large amount of pills for anxiety and depression. They reported this to the doctor at Newport Hospital. At the hospital, Edwards told Nurse Catherine

Aubin (Nurse Aubin) at the emergency room about the events of the night, including his killing Jeanne. He also told her about taking twenty Buspar pills (an antidepressant medication). Shortly after 2 a.m., he was examined by Dr. James Gleason (Dr. Gleason), an emergency room physician. He told Dr. Gleason about his strangling his fiancee.

At about 2:15 a.m., Det. Rosa administered Miranda admonitions to Edwards, and the officer took him into custody as a suspect in a homicide case. Edwards then was taken to the Newport police station to be booked. Later in the morning, he was transferred to the Cranston police station, where he was given a written form containing Miranda admonitions. He signed the form. Thereafter, he made statements to Detective Richard Falcone of the Cranston police consistent with the earlier statements he had made about the killing. He further expressed concerns about his personal effects and declined to speak any more without counsel.

Meanwhile, the Cranston police investigated the scene of the crime and noted the blood in the house and on the driveway, and also found blood on the undercarriage of defendant's car when it was transferred to Cranston. An autopsy report disclosed extensive injuries resulting from blunt force and compressive trauma of the torso. These findings, in the opinion of the chief medical examiner, were consistent with being run over and compressed under a motor vehicle. The cause of death was the rib and pelvic fractures and lung and liver lacerations caused by the compressive blunt force trauma from being run over by a motor vehicle.

To support his appeal, defendant has raised five issues. These issues will be considered in the order in which they appear in defendant's brief. Additional facts will be provided as necessary to deal with these issues.

I. Whether the trial justice erred in imposing a sentence of life without parole when the indictment did not set forth factual allegations or a statutory reference sufficient to invoke a penalty of life imprisonment without parole.

The defendant argues that the trial justice had no authority to impose a sentence of life imprisonment without parole because the indictment returned by the grand jury did not allege a violation of the statute that authorizes the imposition of such penalty, namely, § 11-23-2 and the procedural provisions set forth in G.L.1956 chapter 19.2 of title 12. It is undisputed that defendant waived a jury trial in this case. It is undisputed that within twenty days after defendant's arraignment, the Attorney General, pursuant to § 12-19.2-1 et seq. gave notice of his intention to recommend an enhanced sentence of life imprisonment without parole.[1]

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[1] ***"NOTICE BY THE ATTORNEY GENERAL OF A RECOMMENDATION OF A SENTENCE OF LIFE WITHOUT PAROLE PURSUANT TO R.I.G.L. 11-23-2(4) AND 12-19.2-1***

The State of Rhode Island, by and through its attorneys, Sheldon Whitehouse, Attorney General, J. Patrick Youngs, Assistant Attorney General, and Stacey P. Veroni, Special Assistant Attorney General, in the above entitled matter hereby serves notice upon the Court and the defendant that in the event the defendant is convicted of murder, the State

(Continued on following page)

The defendant's argument is based by analogy on a series of cases decided by the Supreme Court of the United States in recent years. He relies first upon *Jones v. United States,* 526 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999). In *Jones,* the defendant was charged with the use of a firearm while carjacking. The statute provided at that time for an enhanced punishment in the event serious injury or death resulted. The indictment did not refer to the factors that would justify an enhanced punishment, nor did the jury make any finding in respect to the factor of serious bodily injury. The District Judge at the time of sentencing, after the jury verdict, found that serious bodily injury to the victim had resulted and imposed an enhanced sentence. The Ninth Circuit affirmed. The Supreme Court of the United States reversed on certiorari and held that each of the subsections that authorized an enhanced sentence constituted separate offenses that had to be charged and proven in order to impose the long terms above the maximum, which the statute authorized without such additional facts. In this case, the Supreme Court used the technique of statutory interpretation to avoid declaring the statute unconstitutional.

The next case was *Castillo v. United States,* 530 U.S. 120, 120 S.Ct. 2090, 147 L.Ed.2d 94 (2000). This was a case involving a statute that prohibited using a firearm in relation to a crime of violence. The basic maximum penalty,

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recommends to the Court a sentence of life without parole pursuant to R.I.G.L. § 11-23-2(4).

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pursuant to this statute, was five years in prison. However, the statute provided for a mandatory term of thirty years imprisonment if the weapon used was a machine gun. On the authority of *Jones,* the Supreme Court held that the machine-gun-based enhancement was not merely a sentencing factor but a separate offense that required a charge and submission of proof beyond a reasonable doubt to the jury to justify the enhanced penalty. *See Castillo,* 530 U.S. at 131, 120 S.Ct. at 2096, 147 L.Ed.2d at 103.

The third case upon which the defendant relies is *Apprendi v. New Jersey,* 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), which was a state case involving the enhancement of a crime of unlawful possession of a firearm (which carried a maximum penalty of ten years) if the judge found in the sentencing proceeding that the defendant had been motivated by racial bias. The defendant had fired shots into the dwelling of an African-American family. He had been charged with unlawful possession of a firearm. He pled guilty to that charge. In sentencing, however, the judge found as a fact that he had been motivated by racial bias and imposed a sentence of twelve years. The Supreme Court of New Jersey affirmed. On certiorari, the United States Supreme Court again held, although the case arose from a state court, that whenever an additional set of circumstances would authorize the enhancement of punishment beyond the maximum provided in the basic statute, it would be necessary for the court to submit this question to a jury and prove the enhancement circumstances beyond a reasonable doubt. *See Id.* at 490, 120 S.Ct. at 2362-63, 147 L.Ed.2d at 455.

There seems to be no question that the cases of *Jones, Castillo* and *Apprendi* required that whenever a factor or circumstance is alleged, which justifies the enhancement

of a penalty beyond the maximum set forth in a criminal statute, then this factor or circumstance must be submitted to the jury pursuant to the Sixth Amendment of the Constitution and found by the jury beyond a reasonable doubt to justify the imposition of additional penalties. Since the filing of the defendant's brief and the brief of the state, the Supreme Court of the United States has decided two additional cases that are significant in determining this issue.

The first was *Ring v. Arizona,* 536 U.S. ___, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002).[2] (The opinion in this case was issued on June 24 of this year.) In that case, the defendant was found guilty of felony murder. The defendant had participated in an armed robbery of the contents of a Wells Fargo armored van in Glendale, Arizona. In the course of the robbery, the driver was killed by a gunshot wound to the head. Under Arizona law, the facts submitted to the jury dealt only with the commission of the crime of felony murder. An attempt to prove premeditated murder failed because of lack of testimony at trial on that issue.

The jury found Ring guilty of felony murder. However, under the Arizona death penalty statute, the existence of aggravating circumstances, which would justify the imposition of the death penalty, was required to be presented to the trial justice at the sentencing phase of the case. At this phase, an additional witness was presented who established that Ring had actually shot the victim and also that he had played a major role in planning and

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[2] The defendant discusses this case and other recent cases in his reply brief.

implementing the robbery. The judge found two aggravating factors. One, that the defendant committed the offense in expectation of the receipt of something of pecuniary value and two, that the defendant committed the offense in an especially heinous and depraved manner. On appeal, the Supreme Court of Arizona upheld the death sentence on the ground of the factor of pecuniary gain, but found the evidence insufficient to support the aggravating circumstance of depravement. *See State v. Ring,* 25 P.3d 1139 (Ariz. 2001).

On certiorari, an opinion authored by Justice Ginsburg (joined by Justices Stevens, Scalia, Kennedy, Souter and Thomas) held that the determination of the existence of an aggravating factor that would justify the imposition of a death penalty required, as in noncapital cases, that a jury must find the existence of such aggravating factors beyond a reasonable doubt. *See Ring,* 536 U.S. at ___, 122 S.Ct. at 2443, 153 L.Ed. 2d at 576-77. In *Ring,* the Supreme Court overruled its earlier decision in *Walton v. Arizona,* 497 U.S. 639, 110 S.Ct. 3047, 111 L.Ed.2d 511 (1990). In that case, the Court had held that the Arizona sentencing scheme was compatible with the Sixth Amendment because the additional factor found by the judge qualified as a sentencing consideration, not as an element of the offense of capital murder. *See Walton,* 497 U.S. at 649, 110 S.Ct. at 3055, 111 L.Ed.2d at 525. In *Ring,* the Court determined that *Walton* was not compatible with its decision in *Apprendi.*

For purposes of the case at bar, it should be noted that the defendant did not contend nor did the Court hold in *Ring* that the indictment was constitutionally defective because the Fourteenth Amendment has not been construed to include the Fifth Amendment right to presentment or

indictment by a grand jury. *See Ring,* 536 U.S. at ___ n.4, 122 S.Ct. at 2437 n.4, 153 L.Ed.2d at 569 n.4; *Apprendi,* 530 U.S. at 477 n.3, 120 S.Ct. at 2355 n.3, 147 L.Ed.2d at 447 n.3. It should also be noted that in *Hurtado v. California,* 110 U.S. 516, 538, 4 S.Ct. 111, 122, 28 L.Ed. 232, 239 (1884), the Supreme Court of the United States held that the requirement of a grand jury indictment set forth in the Fifth Amendment to the Constitution of the United States was not applicable to the states. In its long course of selective incorporation, the Supreme Court has never overruled *Hurtado.* Thus, as recognized in both *Apprendi* and *Ring,* there is no federal requirement that a felony prosecution, capital or otherwise, be commenced by an indictment issued by a grand jury in a state prosecution.

The other case decided this term was *Harris v. United States,* 536 U.S. ___, 122 S.Ct. 2406, 153 L.Ed.2d 534 (2002), decided the same day as *Ring.* This case is not directly applicable to the case at bar but merely holds that it is unnecessary for a jury to determine the existence of a factor that would trigger mandatory minimum sentencing by virtue of an aggravating factor as long as the mandatory minimum is within the maximum authorized by the basic statute. *See Harris,* 536 U.S. at ___, 122 S.Ct. at 2414, 153 L.Ed.2d at 537-38. In *Harris,* the aggravating factors that triggered mandatory minimum sentences were brandishing (minimum of seven years) or discharging (minimum of ten years) a firearm (pursuant to a federal statute, 18 U.S.C. § 924(c)1(A)) which forbade the use or carrying of a firearm in furtherance of a crime. *Harris,* 536 U.S. at ___, 122 S.Ct. at 2414, 153 L.Ed.2d at 537-38. This case is of interest only because it established that a mandatory minimum sentence may be triggered by sentencing factors that may be found by a judge without the

intervention of the jury. It might be noted that Justices Thomas, Stevens, Souter and Ginsburg dissented from this opinion.

Thus, the present state of the Supreme Law of the Land requires that a circumstance which enhances a sentence beyond the maximum authorized by the basic statute must be found to exist by a jury beyond a reasonable doubt. A circumstance which requires the imposition of a mandatory minimum sentence may be found by a a [sic] trial judge to exist by a fair preponderance of the evidence so long as it does not exceed the maximum authorized in the basic statute.

The Rhode Island statute authorizing the imposition of the penalty of life imprisonment without parole requires the finding of one or more aggravating factors beyond a reasonable doubt by a petit jury unless a jury trial is waived, as was done in this case. *See* G.L.1956 § 12-19.2-1; *State v. Travis,* 568 A.2d 316, 323-24 (R.I.1990).

By waiving a jury, defendant accepted the procedure as followed in this case, that the trial justice, after finding him guilty of the offense of first-degree domestic murder, would proceed to find, as she did, that the aggravating circumstance of torture and aggravated battery had been proven beyond a reasonable doubt. There is no settled constitutional requirement that the aggravating factor set forth in § 11-23-2 be set forth in the grand jury indictment. It is true that in *State v. Lassor,* 555 A.2d 339 (R.I. 1989) the indictment cited the penalty statute § 11-23-2 as well as the substantive murder statute § 11-23-1. However, in the case at bar, the Attorney General complied with § 12-19.2-1 in providing notice within twenty days of the

arraignment that the sentence of life imprisonment without parole would be requested.

In our opinion, this notice satisfied the element of due process required, pursuant to the Constitution of Rhode Island. To suggest that the inclusion of a statutory reference to § 11-23-2 in the indictment would give defendant more effective notice is totally unpersuasive. It is equally unpersuasive to suggest that a grand jury would have declined to issue an indictment had reference to § 11-23-2 been set forth therein. Consequently, we respectfully reject defendant's argument in support of this issue.

II. Whether the trial justice erred in rejecting defendant's diminished capacity defense

The defendant argues that the trial justice erred in rejecting his contention that the state failed to prove beyond a reasonable doubt that he was not suffering from diminished capacity brought about by intoxication or a state of disinhibition caused by ingestion of an anti-anxiety drug called Klonopin. Certainly, Rhode Island recognizes the defense of diminished capacity that may reduce a crime from murder to manslaughter if defendant is unable to form a specific intent. *See State v. Hockenhull,* 525 A.2d 926, 929 (R.I. 1987).

The standard for the defense of diminished capacity was authoritatively stated many years ago in *State v. Vanasse,* 42 R.I. 278, 107 A. 85 (1919). In that case, which involved a charge of assault with intent to commit rape, the defendant asserted that he was entitled to an instruction concerning diminished capacity by reason of voluntary intoxication. The Court held that diminished capacity

could reduce the charge only "when the respondent's intoxication is so complete that he has become entirely incapable of forming the design with which he is charged." *Id.* at 281, 107 A. at 86. The Court went on to comment that:

> "When a particular intent is charged which aggravates the offense actually committed and enlarges it into a greater offense, as in the case under consideration the assault is alleged to have been made with intent to commit rape, then drunkenness is no excuse for the assault, but it may be offered to [negate] the specific intent charged, but only when the drunkenness is of such a degree as to completely paralyze the will of the respondent, take from him the power to withstand evil impulses and render his mind incapable of forming any sane design." *Id.*

In *Hockenhull,* 525 A.2d at 930, we applied the doctrine of diminished capacity to a situation in which the defendant produced evidence that created a reasonable possibility that his will was sufficiently paralyzed, and his capability so diminished by drugs and alcohol, that it was questionable that he could have formed any sane design or intent in carrying out the killing. Therefore we held that the trial justice should have instructed the jury on manslaughter by reason of diminished capacity. *Id.* at 931. *See also State v. Amazeen,* 526 A.2d 1268, 1272 (R.I. 1987) (concluding that the defendant was "not entitled to a charge on a lesser degree of homicide" because "no rational jury could have found that defendant was acting with a will so paralyzed and a capacity so diminished by alcohol to have precluded him from forming any sane design or specific intent in carrying out his killing").

In the case at bar, defendant testified that he had ingested a large quantity of Klonopin while attending the wedding of the victim's daughter. It should be noted that defendant, in his various statements, was inconsistent concerning the timing of this ingestion and the amount thereof. The defendant presented two expert witnesses on this issue, Dr. Michael Ingall (Dr. Ingall) and Dr. Robert Swift (Dr. Swift). Doctor Ingall formed his opinion in reliance upon facts given to him in an interview with defendant. Doctor Swift, who was an expert in pharmacology and psychiatry, did not interview defendant, but assumed that defendant took twenty-five Klonopin tablets over several hours on the day of the wedding. Doctor Ingall assumed that he took the last twelve Klonopin tablets before the killing. The trial justice pointed out in her decision that neither Dr. Swift nor Dr. Ingall could opine with any certainty the amount or "timing of that ingestion." In her extensive and detailed analysis of the evidence on this issue, the trial justice summarized her opinion by stating:

> "I do not believe the defendant's woven tale of klonopin ingestion. I believe that any klonopin he took that day was taken immediately before or just after the crime. I do not assign any weight to any of the other corroborative evidence marshaled in his favor. I do not accept his testimony that he lacked thoughts during the crime and memories thereafter. Absent such credible evidence, his defense of diminished capacity is built on sand. Through the sheer incredulity of his testimony, he has eliminated voluntary klonopin intoxication as a defense to murder. On the state of this evidence, no rational finder of fact could find that the defendant had a capacity so diminished

by klonopin as to preclude him from premeditating or forming an intent to kill.

"* * * *

"It is my judgment, beyond a reasonable doubt, based on the persuasive opinion testimony of Dr. Wall, [the state's expert witness] that the defendant's level of klonopin intoxication (if any), together with his psychiatric conditions (anxiety disorder/personality disorder) did not paralyze his will, take from him the power to withstand evil impulses or render his mind incapable of forming a sane design. He had no black-outs or loss of memory. He planned his actions with the ring, the sequence of assaults and the bridge. He knew what he did was wrong, as evidenced by his statements to his sisters, the police and Newport Hospital personnel. He knew what he was doing at the time: assaulting Jeanne in increasing stages of severity until she died, simply because she would not shut up. Klonopin did not render him incapable of premeditating and forming an intent; he had those capabilities and he exercised them."

The trial justice, in analyzing the context of testimony, commented in her decision

"The testimony of Nurse Aubin, Detective Rosa, and the defendant's sisters as to the defendant's statements in the minutes and hours immediately following his killing of Jeanne Robinson were very credible. They flatly contradicted his trial testimony that he had no thoughts while he was hurting Jeanne, nor ability to plan his behavior, and no recollection of what happened after Jeanne was in his arms. They show that he

> intended to kill Jeanne and that he knew not only that he killed Jeanne but how he killed her."

The state's expert, Dr. Barry Wall (Dr. Wall), together with Dr. William Brennan, evaluated the defendant for competency, and then later further evaluated him on the issue of diminished capacity. Doctor Wall stated unequivocally that defendant was not incapable of forming a sane design. It is noteworthy that Dr. Ingall also testified that defendant did not meet the *Vanasse* standard of diminished capacity. However, he argued that the *Vanasse* standard was impossible to meet unless a person was virtually comatose. *Vanasse,* 42 R.I. at 281, 107 A. at 86. The defendant argues that we should reconsider and reject the *Vanasse* standard, which was formulated more than eighty years ago. A case should not be rejected merely because of its age. Many cases become even more authoritative because they have withstood the test of time. *See, e.g., Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 2 L.Ed 60 (1803).

We recognize that scientific knowledge may render a mental test obsolescent, *see State v. Johnson,* 121 R.I. 254, 267-68, 399 A.2d 469, 476-77 (1979), wherein this Court adopted an insanity test based upon the model penal code in substitution for the *M'Naghton* Rule promulgated by the British House of Lords in the middle of the 19th century.

We do not believe that this case would be appropriate for a reexamination of the standard set forth in *Vanasse.* In light of the trial justice's finding that defendant's testimony was incredible and that his diminished capacity defense was "based on sand," we do not come even close to a situation wherein a different rule would change the

result. The trial justice's findings of fact indicate that at no time before the murder was defendant significantly intoxicated. She expressed the factual opinion that much of his ingestion occurred after the murder when he was on his way to the Newport Bridge. Even at the bridge, the observations of Det. Rosa did not indicate any significant level of intoxication that would disable defendant from forming a specific intent. Indeed, he demonstrated the mental acuity and physical agility to climb onto the I-beam projecting out from the bridge high above the waters of Narragansett Bay.

The findings of fact of a trial justice are reviewed with deference. *See State v. Gasparico,* 694 A.2d 1204, 1208 (R.I. 1997); *State v. Traficante,* 636 A.2d 692, 694 (R.I. 1994). The findings of the trial justice should not be disturbed unless it is shown that he or she overlooked or misconceived material evidence or was otherwise clearly wrong. *See State v. Collins,* 679 A.2d 862, 865 (R.I. 1996); *Traficante,* 636 A.2d at 694. Our review of the evidence in this case and the detailed decision of the trial justice on this issue clearly indicates that she was not only not clearly wrong but that she was completely correct in her factual findings. She did not overlook any portion of the relevant and material evidence on this issue. Indeed, she analyzed this evidence in exhaustive detail.

Consequently, we reject defendant's argument that the trial justice erred in finding beyond a reasonable doubt that his capacity to form a specific intent was not lacking to the required degree to establish a reduction of his offense from murder to manslaughter.

III. Intoxication as a Mitigating Factor

The defendant argues that the trial justice erred in not giving effect to his intoxication as a result of his ingestion of Klonopin as a mitigating factor. He asserts that even if the level of intoxication was not sufficient to meet the *Vanasse* standard for the diminished-capacity defense, it should have been weighed in considering whether to impose the penalty of life imprisonment without parole.

The difficulty with defendant's argument is that the record discloses clearly that the trial justice did consider the element of intoxication. She commented extensively on the allegation of intoxication from Klonopin, but after detailed analysis, she rejected this element as a mitigating factor. In the course of her sentencing proceeding, she described the horrendous acts of escalating violence, which had been described by defendant himself in the course of the trial. She described the act of strangling, followed by the beating with the flashlight, and then the ultimate use of the automobile to crush the life from Jeanne's body. She then commented further:

> "Self-pity then set in and you became overwhelmed not by your brutal acts of violent killing, but of what would happen to you next. You feared going to the Adult Correctional Institutions. You contemplated suicide – your ultimate act of selfishness. But you were too coward[ly] to end your life.
>
> "You chose instead to assign responsibility for Jeanne's death to other persons and other things, instead of taking responsibility for your own actions. You have blamed Jeanne for her own death, suggesting that if she had respected

> your feelings about not wanting to meet her past family, her murder never would have occurred. You have blamed drugs. You wanted me to believe that it was Klonopin that made you do it. Your testimony regarding Klonopin ingestion and your memories surrounding the murder were, in my judgment, patently false. You have not been truthful about your drug and alcohol ingestion or the circumstances regarding the commission of your crime with your family, Jeanne's family, your doctors, this Court, or yourself. Your testimony about the murder was a far cry from the truth, the whole truth and nothing but the truth."

It is extremely significant that the testimony from defendant's expert witnesses, as well as the testimony of Dr. Wall for the state, all were dependent upon facts given to the doctors by defendant. There was no way to tell how many Klonopin tablets he had ingested before the murder, as opposed to those he ingested after the murder. In short, the evidence relating to his ingestion largely depended on the credibility of defendant's own testimony. The trial justice commented upon this credibility once more.

> "The Court finds no evidence to support your claim, Mr. Edwards, that you ingested drugs and that such ingestion played a role in your act of murder and thus should be considered a mitigating factor in sentencing. This Court did not accept your trial testimony regarding Klonopin ingestion as connected to your brutal acts and thus, does not accept your ingestion of Klonopin by you today as a mitigating factor, in sentencing you for murder. Indeed, far from being a mitigating factor, your lack of truthfulness regarding Klonopin ingestion and your memory of the crime and your attempt to blame the crime on that

> drug, rather than accepting responsibility yourself, are considered aggravating factors by the Court that are so significant as to thwart the possibility of any future meaningful rehabilitation."

In determining that there was no evidence to support defendant's claim, the trial justice was not negating the testimony of Dr. Wall or even the testimony of defendant's expert witnesses. She stated that defendant's own testimony about the timing and amount of his ingestion of Klonopin was completely lacking in credibility. She had made similar statements in passing upon the claim of diminished capacity. It cannot be overemphasized that the testimony of the expert witnesses in each instance depended on statements that defendant gave to the experts.

The only time at which the trial justice determined that defendant may have been intoxicated was upon his arrival at the Cranston police station, when she found that it was not entirely clear that he was able to understand and appreciate the *Miranda* admonitions. This occurred approximately ten hours after defendant had been encountered on the Newport Bridge and nearly eleven hours after the homicide was committed. The defendant himself admitted ingesting a number of Klonopin tablets during his ride from Cranston to the Newport Bridge. Doctor Wall's testimony, which depended largely on information defendant gave to him in the course of several interviews, was extremely tentative concerning defendant's level of intoxication at the time the homicide was committed. He was definite only on the opinion that whatever level of intoxication defendant had when he committed the acts relating to the victim's death, it did not meet the legal standard for diminished capacity. He did not, of course,

comment on whether defendant's state of intoxication should be considered as a mitigating factor, since his testimony did not purport to be relevant to that issue.

In our opinion, the trial justice carefully considered the factors of torture and aggravated battery leading to the victim's death. She considered all the mitigating factors, including defendant's age, his having no prior criminal record, his gainful employment, his family relationships, as well as his claim of intoxication. She expressed the considered opinion that the aggravating factor outweighed the mitigating factors. She rejected the claim of intoxication as a significant mitigating factor. Our analysis of the record causes us to conclude that the trial justice was correct in her findings. We reject defendant's contention that she erred in her refusal to accept the factor of intoxication in mitigation of the offense to preclude a sentence of life imprisonment without parole. We agree with the trial justice that this sentence was warranted and met all the statutory standards of the commission of murder in the first degree, with the aggravating factor that it was "committed in a manner involving torture or an aggravated battery to the victim." In the exercise of our independent judgment, we affirm the sentence of life imprisonment without parole.

IV. The motion to suppress statements made on the Newport Bridge and at Newport Hospital

The defendant argues that statements he made to Det. Rosa and Trooper Simon Liu (Trooper Liu) on the Newport Bridge should have been suppressed because the defendant was in an intoxicated state at the time he made those statements. The defendant also argues that statements he

made to Nurse Aubin at the emergency room of the Newport Hospital should have been suppressed. He argues that if he was sufficiently intoxicated when interrogated by the Cranston police to warrant suppression of statements while in their custody, the same exclusionary rule should be applied to statements he made earlier on the Newport Bridge and to Nurse Aubin.

This argument must be considered in light of the unequivocal finding by the trial justice by clear and convincing evidence that the statements to Det. Rosa and Trooper Liu were "spontaneous statements that were not the result of police questioning." She further found that defendant was not in custody while he balanced himself on the I-beam at the bridge, and that the officers did not interrogate him at that time. Those findings of fact, of course, are entitled to deferential review because they are matters of historical fact. They were strongly supported by the surrounding evidence. At the time the officers encountered defendant precariously balanced on the I-beam, he was clearly threatening to commit suicide. The officers' motivation was to dissuade him from the act of self destruction, not to interrogate him. Certainly, he was not in police custody. The only tool that the police could exercise was persuasion to prevent defendant from carrying out his threat of suicide.

As a matter of law, the exclusionary rule of *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) does not come into play unless it is triggered by two factors: (1) custody, and (2) interrogation. Our comments in *State v. Caruolo,* 524 A.2d 575 (R.I. 1987) are applicable equally to the case at bar.

"By its own terms the rule applies only when interrogation occurs within the coercive atmosphere of police custody. *Id.* at 444, 86 S.Ct. at 1612, 16 L.Ed.2d at 707; *see Minnesota v. Murphy,* 465 U.S. 420, 430, 104 S.Ct. 1136, 1144, 79 L.Ed.2d 409, 421 (1984) (*Miranda* warnings inapplicable to questioning in noncustodial settings); *Beckwith v. United States,* 425 U.S. 341, 346, 96 S.Ct. 1612, 1616, 48 L.Ed.2d 1, 7 (1976) (custodial nature of interrogation triggers need for *Miranda* warnings). Although a certain degree of coerciveness inheres in any police interrogation of a person suspected of a crime simply because of the aura of authority surrounding the interrogating officer, custody as contemplated by *Miranda* does not exist merely because the interrogation occurs at a police station or because the interrogated person is suspected of a crime or is the focus of a police investigation. *Oregon v. Mathiason,* 429 U.S. 492, 495, 97 S.Ct. 711, 714, 50 L.Ed.2d 714, 719 (1977); *Beckwith,* 425 U.S. at 347, 96 S.Ct. at 1616, 48 L.Ed.2d at 8. Nor does it necessarily exist when the interrogating officer consciously seeks incriminating evidence. *Murphy,* 465 U.S. at 428, 431, 104 S.Ct. at 1142, 1144, 79 L.Ed.2d at 419, 422. Rather the decisive test for determining whether a person is in custody for purposes of receiving *Miranda* warnings is whether the person is formally arrested or whether the person's freedom of movement is restricted to the degree associated with formal arrest. *California v. Beheler,* 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3519, 77 L.Ed.2d 1275, 1279 (1983). Absent a formal arrest the determination of whether a person is subjected to restraints comparable to those associated with a formal arrest turns on how a reasonable person in the suspect's position would understand the situation. *Berkemer*

v. McCarty, 468 U.S. 420, 442, 104 S.Ct. 3138, 3152, 82 L.Ed.2d 317, 336 (1984)." *Caruolo,* 524 A.2d at 579.

In many of the cases cited in *Caruolo,* one of the elements was present, such as interrogation in *Mathiason* and *Murphy.* In this case, on the Newport Bridge, neither the element of custody nor interrogation was present and, therefore, the exclusionary rule clearly did not apply.

The defendant's statements to Nurse Aubin were not elicited by any police interrogation. They were spontaneous utterances made to her. Although defendant was under restraint at the Newport Hospital, the restraint was not related to a criminal charge, but only to prevent his committing an act harmful to himself.

The defendant argues that even in the absence of interrogation in custody, his statements on the bridge and at the hospital should be excluded because of his alleged intoxication. This argument cannot survive the holding of the Supreme Court of the United States in *Colorado v. Connelly,* 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). In *Connelly,* the suspect was mentally unbalanced. He approached a Denver Police officer and said that he wanted to confess to committing a murder. He was advised of his *Miranda* rights, and said that he understood them. At police headquarters, he confessed to the murder in detail and pointed out the location of the murder. After being held overnight, he was interviewed the following day by the public defender. During the course of the interview, he became visibly disoriented. Subsequently, a psychiatrist examined him at the state hospital and expressed the opinion that the defendant had confessed because he believed that "the voice of God" directed him to admit his crime. The psychiatrist testified that defendant's psychosis

had motivated his confession. Based on the psychiatrist's testimony, the trial court suppressed the defendant's statements, finding that they were made involuntarily. The Colorado Supreme Court affirmed, holding that the absence of police coercion or duress did not foreclose a finding of involuntariness. *Colorado v. Connelly,* 702 P.2d 722, 729 (Colo. 1985).

On certiorari, in an opinion written by Chief Justice Rehnquist, the Supreme Court of the United States reversed the judgment of the Supreme Court of Colorado, holding that the defendant's mental condition was not in and of itself sufficient to base a finding that his confession was not voluntary. *See Connelly,* 479 U.S. at 164, 107 S.Ct. at 520, 93 L.Ed.2d at 482. The majority stated that coercive government conduct was a necessary prerequisite to a finding that a confession was not voluntary within the meaning of the Due Process Clause of the Federal Constitution. *See id.* at 167, 107 S.Ct. at 522, 93 L.Ed.2d at 484. Chief Justice Rehnquist commented that *Miranda* protects only against government coercion, not coercion flowing from the "voice of God." *See id.* at 170-71, 107 S.Ct. at 523-24, 93 L.Ed.2d at 487. Justice Stevens, who concurred in the judgment and dissented in part, agreed that the defendant's pre-custodial statements were admissible. *See id.* at 171-72, 107 S.Ct. at 524, 93 L.Ed.2d at 487 (Stevens, J., concurring in part and dissenting in part). They were in fact involuntary, he stated, but nevertheless admissible since they were not obtained in violation of the Fifth Amendment. *See id.* at 172, 107 S.Ct. at 524, 93 L.Ed.2d at 487-88. Only Justices Brennan and Marshall dissented from the court's judgment based upon the asserted unreliability of statements made by the mentally ill. *See id.* at

188, 107 S.Ct. at 533, 93 L.Ed.2d at 498 (Brennan, J., dissenting).

The holding in *Connelly* arguably might have supported the admission of statements made to the Cranston police. It clearly and unequivocally supports the admission of the spontaneous utterances made without interrogation to Det. Rosa and Trooper Liu on the Newport Bridge, and to Nurse Aubin at the Newport Hospital. We decline to accept defendant's argument on this issue.

V. The rebuttal testimony of defendant's former wife

The defendant contends that the trial justice erred in receiving rebuttal testimony from Susanne Murray, his former wife, relating to episodes of violence on his part, some of which had taken place while he had been intoxicated, and some occurred without the ingestion of alcohol.

The entire theory of Edwards's defense was based upon the contention that the commission of his brutal acts upon the person of Jeanne occurred as a result of his disinhibition while intoxicated under the influence of Klonopin. The inference, which he sought to have the trier of fact draw from his testimony and that of his expert witnesses was to the effect that he would not have committed this crime if he had not been under the influence of an intoxicant.

When the prosecutor cross-examined Edwards in relation to his conduct concerning Susanne Murray, he sought to raise an issue relating to his propensity for violence. It is generally true that prior bad acts on the part of a defendant are not admissible to show that he has a

propensity to commit the type of crime with which he is charged. *See* Rule 404(b) of the Rhode Island Rules of Evidence. However, in the case at bar, defendant had placed his character in issue by contending that intoxication had diminished his ability to commit an intentional homicide. *See McCormick's Handbook of the Law of Evidence,* § 191 (2d ed. Cleary 1972). Even defendant concedes that evidence of prior violence could be used to impeach his testimony. In this case, there was never any factual dispute concerning defendant's physical actions. The testimony of Susanne Murray was not used to prove that defendant performed the physical acts that resulted in Jeanne's death. It was used only to rebut Edwards' defense of diminished capacity and concomitant suggestion that he would have been unlikely to commit such acts unless he was under the influence of an intoxicant such as Klonopin or alcohol. This was an issue that was not invented by the prosecution or manufactured in the course of cross-examination, as was the case in *State v. O'Dell,* 576 A.2d 425, 429 (R.I. 1990).

One of the specific exceptions in Rule 404(b) is that evidence of prior bad acts may be admissible if other purposes, such as "proof of motive, opportunity, *intent*", are the objectives of the evidence. If the defendant presents himself as a nonviolent individual, the state may rebut this image by presenting evidence to the contrary. The remoteness in time of such acts might well affect the weight to be given to the evidence but would not cause it to be inadmissible. In our opinion, this evidence was relevant on the issue of intent. "[E]vidence of prior criminal acts [or bad acts] are inadmissible only if that evidence is both prejudicial and irrelevant." *State v. Martinez,* 651 A.2d 1189, 1194 (R.I. 1994).

In this nonjury trial the risk of undue prejudice under Rule 403 of the Rhode Island Rules of Evidence was minimal. The determination of relevance by the trial justice did not constitute an abuse of discretion. *See State v. Gabriau,* 696 A.2d 290, 294 (R.I. 1997). This evidence was properly admitted on the issue of the defendant's ability to form a violent intent with or without the influence of intoxication. The trial justice did not err. No prejudicial error was committed in admitting the challenged testimony.

Conclusion

For the reasons stated, the appeal of the defendant is denied and dismissed. The judgment of conviction and the sentence imposed in the Superior Court are hereby affirmed. The papers in the case may be remanded to the Superior Court.

Supreme Court
No. 01-389-C.A.

State of Rhode Island

v.

Edwin B. Edwards III

ORDER

The state's motion to strike the petition for reargument as untimely is denied.

Entered as an Order of this Court this ***12th*** day of ***December 2002***.

/s/ Michael Cafferty
Clerk

U.S. Const. Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for

payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

R.I. Gen. L. § 11-23-1. Murder. – The unlawful killing of a human being with malice aforethought is murder. Every murder perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, malicious, and premeditated killing, or committed in the perpetration of, or attempt to perpetrate, any arson or any violation of §§ 11-4-2, 11-4-3, or 11-4-4, rape, any degree of sexual assault or child molestation, burglary or breaking and entering, robbery, kidnapping, or committed during the course of the perpetration, or attempted perpetration, of felony manufacture, sale, delivery, or other distribution of a controlled substance otherwise prohibited by the provisions of chapter 28 of title 21, or while resisting arrest by, or under arrest of, any state trooper or police officer in the performance of his or her duty; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him or her who is killed is murder in the first degree. Any other murder is murder in the second degree. The degree of murder may be charged in the indictment or information, and the jury may find the degree of murder, whether the same be charged in the indictment or information or not, or may

find the defendant guilty of a lesser offense than that charged in the indictment or information, in accordance with the provisions of § 12-17-14.

R.I. Pub. L. 1996, ch. 152, sec. 1, codified at R.I. Gen. L. sec. 11-23-2 (current version appearing at sec. 11-23-2 (2000 Reenactment):

> 11-23-2. Penalties for murder. – Every person guilty of murder in the first degree shall be imprisoned for life. Every person guilty of murder in the first degree (1) committed intentionally while engaged in the commission of another capital offense or other felony for which life imprisonment may be imposed; or (2) committed in a manner creating a great risk of death to more than one person by means of a weapon or device or substance which would normally be hazardous to the life of more than one person; or (3) committed at the direction of another person in return for money or any other thing of monetary value from that person; or (4) committed in a manner involving torture or an aggravated battery to the victim; or (5) committed against any member of the judiciary, law enforcement officer, corrections employee, assistant attorney general or special assistant attorney general, or firefighter arising from the lawful performance of his or her official duties; or (6) committed by a person who at the time of the murder was committed to confinement in the adult correctional institutions or the state reformatory for women upon conviction of a felony; or (7) committed during the course of the perpetration or attempted perpetration of felony manufacture, sale, delivery or other distribution of a controlled substance

otherwise prohibited by the provisions of chapter 21-28 of the general laws, shall be imprisoned for life and if ordered by the court pursuant to chapter 19.2 of title 12 such person shall not be eligible for parole from imprisonment. Every person guilty of murder in the second degree shall be imprisoned for not less than ten (10) years and may be imprisoned for life.

IN THE SUPERIOR COURT
FOR THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS
PROVIDENCE COUNTY

STATE OF RHODE ISLAND

V. IND. NO. P1/99-4284A

EDWIN EDWARDS, alias John Doe

The Grand Jury of the State of Rhode Island and Providence Plantations charges:

That EDWIN EDWARDS, alias John Doe, of Providence County, on a day and date between the 18th day of September and the 19th day of September, 1999, the exact day and date unknown to the grand jurors at Cranston, in the County of Providence, did murder Jeanne Robinson, in violation of §11-23-1 and section 12-29-2 and 12-29-5 of the General Laws of Rhode Island, 1956, as amended (Reenactment of 1994).

/s/ Stacey P. Veroni
SPECIAL ASSISTANT
ATTORNEY GENERAL
STACEY P. VERONI

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC		SUPERIOR COURT
STATE OF RHODE ISLAND	:	
	:	C.A. No.
vs.	:	P1-99-4284A
EDWIN B. EDWARDS, III	:	

DEFENDANT'S SENTENCING MEMORANDUM

The above-entitled matter was heard before Justice Judith Savage on the charge of first-degree murder, and after a bench trial thereon, the Defendant was found guilty of first-degree murder on February 6, 2001. The Court, entertaining the State's notice of intention to recommend sentence of life without parole, ordered that the parties submit a sentencing memorandum.

Defendant's Background

In addition to the information supplied to the Court in the Pre-sentence report prepared by the Probation Department, the Defendant, in his own words, wishes the Court to consider the following information:

> "As a child I had a very good upbringing and was treated very well by my Mother and Father. My brother, twin sisters and I were all treated equally and fairly. We were taken on many vacations to New York where my grandfather lived. My grandfather, Eddie Edwards, was a famous jazz trombonist.
>
> "From the time I was a small child, I had a fascination with my Uncle's garage. My Uncle, my Mother's brother, was Charles Jackson. His garage was on Park Avenue at the corner of Park

Avenue in Portsmouth, Rhode Island. My family's home was and is presently located at 25 Cove Street in Portsmouth, at short distance from the garage. As often as possible, I would walk down the street to the garage and stay there with my Uncle as late as possible, until inevitably, my mother would send my brother to come get me.

"I played Little League and Babe Ruth Baseball, and my family would always go to see me play. I swam in the summers since we lived very close to the Sakonnet River; bowled; and iceskated in the winter on the nearby salt marshes.

"The most favorite place for me to be as I was growing up and even after I was grown up was my Uncle's garage. This garage was very large as it housed his Shell gasoline business, automotive repair shop and his rubbish removal business. My uncle would let me use the garage any time I wanted to. If any of my friends had a problem with their cars, we could use one of the back stalls to try to fix things. My uncle, who was a super good mechanic, wouldn't do the work for us unless we really couldn't do it ourselves. His motto was, "If I do the work for you, you won't learn how to fix things yourself." He preferred to help us through the problem.

"I graduated from Rogers High School in Newport and worked for the telephone company for the summer in the Central Office Equipment Installation division in Portsmouth. I attended Johnson and Wales University and received an Associate's Degree. While in college, I was a member of the Rhode Island National Guard. After college, I worked for the Union of Electrical Workers on Cape Cod for several years until the

bottom fell out of the energy market and work slowed down.

"When I was 28 years old, I married my first wife, Susanne Dubois. Before we got married, my mother tried to discourage us from getting married, saying that I didn't have a full-time job and that jobs were very hard to come by at that time. Susanne worked as an insurance clerk in Fall River, and together we did not make the amount of money necessary for the lifestyle we wanted to live. The marriage lasted ten months – my mother was right, as usual.

"My second marriage to Cheryl Ferris in 1979 was a very good marriage. She is a wonderful person who I loved very much, and it was very hard to take when we broke up and divorced after so many years. However, we remain good friends even until today.

"I worked as a salesman for Dan Angelone Chevrolet in Bristol, and up until September 1999, as a truck salesman for Colony Ford in Warwick.

"I have a very difficult time expressing my overwhelming guilt and sadness about the terrible tragedy that resulted in Jeanne Robinson's death. During our relationship, I thought I found the woman I truly loved, and looked forward to marrying her. I know my sadness and remorse will never replace her, and I hope her family will accept my sincerest apology."

Witnesses to Testify on Behalf of Defendant at Hearing on Life Without Parole

The defendant anticipates the following witnesses to testify on his behalf at the mitigation stage of the hearing:

Cheryl F. Edwards
Water St.
Portsmouth, RI 02871

Kenneth R. Trembly, Esq.
Chase Rd.
Portsmouth, RI 02871

The Indictment does not Refer to § 11-23-2 and this Court therefore cannot Impose Sentence of Life Without Parole

The indictment in this case charges that the Defendant committed murder "in violation of § 11-43-1 [sic] and section 12-29-2 and 12-29-5 . . . " The indictment does *not* refer to section 11-23-2, which allows for imposition of life without parole upon proof of one or more additional elements. Based on the law as developed in three recent United States Supreme Court cases, the indictment in this case is not adequate to invoke the sentence of life without parole. *See Jones v. United States*, 526 U.S. 227, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999); *Castillo v. United States*, 530 U.S. 120, 120 S. Ct. 2090, 147 L. Ed. 2d 94 (2000); *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

These cases hold that whenever the prosecution seeks to invoke statutory sentence enhancements, the offense as enhanced becomes a separate offense that must have been charged by the grand jury. Without the grand jury having passed upon – and charged violation of – section 11-23-2,

imposing such a sentence would be contrary to the Rhode Island Constitution's guarantee of presentment or indictment, R.I. Const. Art. I, § 7 (requiring presentment or indictment for "any offense which is punishable by death or by imprisonment for life"); the guarantee of due process, R.I. Const. Art. I, § 2 (due process), and the analogous provisions of the United States Constitution. U.S. Const. Amend. 5, Amend. 6, Amend. 14.

Legal Standard to be Utilized When Evaluating State's Recommendation

In this case the Defendant at trial introduced evidence that he was intoxicated by medication; Rhode Island law required that at that point the prosecution negate the defense of diminished capacity beyond a reasonable doubt. Defendant pointed out that the *Vanasse* standard for diminished capacity by voluntary intoxication was virtually impossible to meet and that the proper standard must therefore be different from *Vanasse*.

Whatever the merits of *Vanasse* for purposes of determining guilt at trial, this court cannot apply the same standard at this time in determining whether the Defendant's intoxication is a mitigating factor for purposes of sentencing; if a sentencing court found that the defendant's circumstances met the *Vanasse* standard, the defendant could not be guilty of first degree murder, let alone sentenced to life without parole. Therefore, consideration of intoxication as a "mitigating factor" must necessarily contemplate evidence of intoxication that would not necessarily meet the *Vanasse* standard.

Other jurisdictions, in their capital sentencing statutes, recognize that factors such as emotional duress and

intoxication are weighed by a lesser standard for sentencing purposes. In the federal capital sentencing statute, for example, the statute requires considering whether the defendant's capacity was impaired "regardless of whether the capacity was so impaired as to constitute a defense to the crime." 18 U.S.C. § 3592(a)(1).[1] The Model Penal Code also requires the Court to consider whether the defendant's capacity "was impaired as a result of mental disease or defect or intoxication." Model Penal Code, Art. 210.5(4).

The Rhode Island Supreme Court notes that impairment by intoxication does not rest upon a scientific formulation but instead on the facts and circumstances of the particular case. *See State v. DiCicco*, 707 A.2d 251 (R.I. 1998). Even if the Defendant at trial could not meet the *Vanasse* definition of diminished capacity, the evidence does establish that the Defendant was intoxicated and that his condition interfered with his ability to make decisions and formulate judgments. This fact mitigates the Defendant's level of culpability for sentencing purposes, "regardless of whether the capacity was so impaired as to constitute a defense to the crime." 18 U.S.C. § 3592(a)(1).

Conclusion

For the foregoing reasons, and for such additional reasons as may be presented at the sentencing hearing,

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[1] The federal statute also addresses "duress" and defines it as:

> Duress. The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

Id. § 3592(a)(2).

the Defendant respectfully prays that this Honorable Court reject the State's recommendation of Life Without Parole.

Respectfully submitted
EDWIN B. EDWARDS, III
By his Attorneys,

/s/ Christopher S. Gontarz
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/s/ Thomas M. Dickinson
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Providence, RI 02903

CERTIFICATION

I hereby certify that a copy of the Defendant's Sentencing Memorandum was hand delivered to Assistant Attorneys General Stacey Veroni and J. Patrick Youngs on the 2d day of April 2001.

/s/ Christopher S. Gontarz
Christopher S. Gontarz, Esq.